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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,942	05/16/2001	Michael Sachs	2633.1	1439

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FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 06/05/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/855,942

Applicant(s)

SACHS, MICHAEL

Examiner

Fenn Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 13, 14, 16, 18-20 and 33-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 13, 14, 16, 18-20 and 33-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 19-20, 33-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Tallarida et al. (U.S. Patent No. 6,520,964). Referring to claim 1, Tallarida discloses an implant (40) having a female connector element (44), wherein the female connector element may be snappingly attachable to a male connector element. (Column 11, lines 20-22).
3. Referring to claim 2, Tallarida discloses a surgically implantable augment (40) having a female connector element (44), wherein the female connector element may be snappingly attachable to a male connector element. (Column 11, lines 20-22).
4. Referring to claim 3, Tallarida discloses the augment substantially being a button. (See fig. 19c).
5. Referring to claim 19, Tallarida discloses an implant capable of being part of a surgical kit, the implant (40) having a female connector element (44), wherein the

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female connector element may be snappingly attachable to a male connector element.
(Column 11, lines 20-22).

6. Referring to claim 20, Tallarida discloses a surgically implantable connector system including a female connector element (44) and a male connector element (14), the male and female connector elements being respectively shaped such as to be snappingly attachable to each other. (Column 11, lines 20-22).

7. Referring to claim 33, Tallarida discloses implantable members capable of being part of a surgical kit including a first implant (40) having a first connector element, and second implant having a second connector element (14), wherein the first and second connector elements are adapted to engage each other in such manner as to secure themselves together.

8. Referring to claim 34, Tallarida discloses the first and second connector elements shaped to fit together in mechanical engagement to secure them together.
(Column 11, lines 18-19).

9. Referring to claim 35, Tallarida discloses the first and second elements shaped to fit together snappingly to secure themselves together (column 11, lines 20-22).

10. Referring to claim 36, Tallarida discloses the first connector element fitting inside the second connector element (column 11, lines 44-50), with the connector elements having sufficient resilience to permit the connector elements to be fitted together in mechanical engagement to secure them together. (Inherently if elements are snap-fit together as taught in column 11, lines 20-22, elements must have a degree of resilience.)

11. Referring to claim 37, Tallarida inherently discloses the second connector element having a degree of resilience (see above paragraph).
12. Referring to claim 38, Tallarida discloses the elements having notches (see fig. 19e.), which would inherently contribute to resilience.
13. Referring to claim 39, Tallarida inherently discloses the first connector element having a degree of resilience (see paragraph 10).
14. Referring to claim 40, Tallarida inherently discloses portions of the first connector element that can be pushed together with the second connector element in order to set the members in mechanical engagement.
15. Referring to claim 41, Tallarida discloses the first and second connector elements being approximately round. (See figs.)
16. Referring to claim 42, Tallarida discloses the first and second connector elements being approximately hexagonal.
17. Claims 13-14, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Sertich (U.S. Patent No. 5,800,550). Referring to claims 13-14, Sertich discloses a strut (30) including a female connector element (apertures), wherein male connector elements can be snappingly attached to the female connector element. (Column 6, lines 45-56).
18. Referring to claim 16, Sertich discloses the strut having one plain hole (see fig. 3).
19. Referring to claim 18, Sertich discloses a strut having a first portion with a female connector element, wherein the female connector element can be snappingly attached

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to a male connector element, and a second portion extending in a first direction (taken as same direction as the first portion) and not having connector elements.

Response to Arguments

20. Applicant's arguments with respect to claims 1-3, 13-14, 16, 18-20, and 33-42 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Blaustein et al.	U.S. Patent No. 6,350,265
Lesinski et al.	U.S. Patent No. 5,951,301
Harkey, III et al.	U.S. Patent No. 6,547,790

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

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The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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June 1, 2003